

KENNETH COLE
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KENNETH COLE, : C.A. No.:
BRIGITTE L. BROWN, : 05-270 KAJ
Plaintiffs, : CONFIDENTIAL
v. :
DELAWARE TECHNICAL AND :
COMMUNITY COLLEGE, :
Defendant. :

Continued deposition of KENNETH COLE, taken
pursuant to notice before Tanya M. Congo, a Notary
Public and Certified Shorthand Reporter, at the
offices of Morris, James, Hitchens & Williams, LLP,
222 Delaware Avenue, 10th Floor, Wilmington,
Delaware, on Tuesday, February 7, 2006, beginning at
approximately 1:05 p.m., there being present:

APPEARANCES:

MARGOLIS, EDELSTEIN
1509 Gilpin Avenue
Wilmington, Delaware 19806
BY: LORI A. BREWINGTON, ESQUIRE
Attorney for Plaintiffs

MORRIS, JAMES, HITCHENS & WILLIAMS, LLP
222 Delaware Avenue, 10th Floor
Wilmington, Delaware 19899
BY: DAVID H. WILLIAMS, ESQUIRE
Attorney for Defendant

Also present: Brigitte L. Brown
Paul Morris

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1 C O N F I D E N T I A L S E S S I O N

2 (Thereupon, the following testimony
3 was deemed to be confidential and placed under
4 separate cover:)

5 BY MR. WILLIAMS:

6 Q. Well, I would say that you can put it
7 under seal, I guess, if you want to, but I think it's
8 appropriate discovery in this case.

9 A. The business in sales, it's about, for
10 2005, 192.

11 Q. What income did you derive from the
12 business in 2005?

13 A. My income is -- I only draw 1200 a month.

14 Q. And in addition to that, do you have other
15 distributions of dividends or profits?

16 A. No.

17 Q. Do you retain earnings in the company?

18 A. Yes, there's no stockholders.

19 Q. How much did you retain -- is it a
20 Subchapter S Corporation?

21 A. Yes.

22 Q. I'm not a tax lawyer, but my understanding
23 of Subchapter S is that whatever income is generated
24 flows through to the owner of the business; has that

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1 been your understanding?

2 A. No, that's a -- you're thinking of LLC.

3 Q. How much was retained in earnings in 2005?

4 A. Forty, 50,000.

5 Q. Did the corporation file a tax return?

6 A. Always.

7 Q. And I assume you filed a tax return?

8 A. Always.

9 Q. And between the tax return filed by the
10 company and the tax return filed by you, we would be
11 able to determine how much you earned and how much
12 was earned by the corporation in 2005?

13 A. Absolutely.

14 Q. And the same would be true of each year
15 since -- beginning in 2002?

16 A. Absolutely. I have accountants.

17 Q. Have you provided any of those records to
18 your counsel?

19 A. I'm sorry.

20 Q. Have you provided those records to your
21 counsel?

22 A. No.

23 Q. If you were working for the college full
24 time, are you telling me that you would nevertheless

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1 be able to work for your business full time as well
2 and generate the same level of earnings?

3 A. I'm sorry. Repeat that.

4 Q. If you had a full-time position with the
5 college, isn't it correct that you would not be in a
6 position to devote the time that you have devoted to
7 your outside business in 2002, 2003, 2004 or 2005?

8 MS. BREWINGTON: Objection. Calls for
9 speculation.

10 THE WITNESS: Ask the question again.

11 I'm sort of --

12 BY MR. WILLIAMS:

13 Q. Well, you --

14 A. -- wavering here.

15 Q. Early on in the deposition you said that
16 most days you leave work at the college and go to
17 your place of business.

18 A. Okay.

19 Q. Is that in Wilmington?

20 A. Yes.

21 Q. Is it close by the college?

22 A. Philadelphia Pike, Route 3 and
23 Philadelphia Pike.

24 Q. So you drive to Philadelphia Pike and you

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1 get there by what, about 2:30 normally?

2 A. Yes.

3 Q. And, then you spend most days -- you're
4 there until 5:30, sometimes 6:00, sometimes 7:00 and
5 sometimes 8:00, sometimes 9:00?

6 A. Yes.

7 Q. And do you do that every workday?

8 A. Yes.

9 Q. And you said you also work on some
10 weekends?

11 A. Yes.

12 Q. Isn't it a fact that if you were working
13 in a full-time position at the college, that you
14 wouldn't be able to go there at your other place of
15 work or business at 2:30 every day?

16 MS. BREWINGTON: Objection.

17 THE WITNESS: That's -- that's true to
18 some extent. You asked me what the corporation was
19 generating today. In 2002 the corporation wasn't
20 generating that kind of money. So when the position
21 came, or didn't become available, it would be a
22 different assessment in 2002 or evaluation whether to
23 take a full-time position and sort of manage from,
24 you know, long range, 'cause I have a proficient

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1 manager in place that could manage the business. The
2 business has a lot to do with Internet, clients
3 access the Internet.

4 MS. BREWINGTON: We can go off now.
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Date: February 7, 2006

Examination of:

PAGE

Kenneth Cole

(By Mr. Williams)

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EXHIBITS

NAME

DESCRIPTION

PAGE

(None)